

1 SENATE BILL NO. 411

2 INTRODUCED BY R. ERICKSON

3 BY REQUEST OF THE SENATE TAXATION STANDING COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM PENALTY ASSESSMENTS ON
 6 DELINQUENT TAXES; AMENDING THE WAIVER OF INTEREST; PROVIDING THAT THE PENALTIES FOR
 7 SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN
 8 OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; AMENDING SECTIONS 15-1-206 AND 15-1-216, MCA;
 9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
 13 **Section 1.** Section 15-1-206, MCA, is amended to read:

14 **"15-1-206. Waiver of penalties -- interest.** (1) The department may, in its discretion, waive, for
 15 reasonable cause, any penalty assessed by the department.

16 (2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion,
 17 waive interest not to exceed ~~\$100 due upon the tax~~ \$500 due per tax period. In cases of a taxpayer agreeing to
 18 a payment plan to satisfy any delinquent debt, the department may waive an additional \$100 of interest per tax
 19 period provided that all terms of the payment plan have been met by the taxpayer. WHEN THE DEPARTMENT ENTERS
 20 INTO A PAYMENT PLAN WITH A TAXPAYER THAT ALLOWS THE TAXPAYER TO MAKE INSTALLMENT PAYMENTS OF DELINQUENT
 21 TAXES, INTEREST, AND PENALTIES, THE DEPARTMENT MAY AGREE TO WAIVE AN ADDITIONAL \$100 OF INTEREST PER TAX
 22 PERIOD IF THE TAXPAYER MAKES EACH PAYMENT REQUIRED BY THE PLAN ON OR BEFORE THE DUE DATE OF THE PAYMENT
 23 AND COMPLIES IN A TIMELY MANNER WITH ALL OTHER TERMS OF THE PAYMENT PLAN."

24
 25 **Section 2.** Section 15-1-216, MCA, is amended to read:

26 **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**
 27 **-- exceptions -- uniform provision for interest on overpayments.** (1) ~~A~~ (A) SUBJECT TO SUBSECTION (1)(B), A
 28 person who fails to file a required tax return or other report with the department by the due date, including any
 29 extension of time, of the return or report must be assessed a late filing penalty of ~~\$50 or the amount of the tax~~
 30 due, whichever is less 5% of the tax due for each month or fraction of a month during which there is a failure to

1 file the return or report in an amount up to 25% of the tax due but not less than \$50. The late filing penalty runs
 2 for the period up to the date the department actually receives the late return or report. The penalty is computed
 3 only on the net amount of tax due as of the original due date, if any, on the return or report after credit has been
 4 given for amounts paid through withholding, estimated tax payments, and other credits claimed on the return.

5 (B) A PENALTY IMPOSED UNDER SUBSECTION (1)(A) MUST BE REDUCED BY THE AMOUNT OF THE PENALTY
 6 IMPOSED UNDER SUBSECTION (2)(A) OR (2)(B).

7 (2) (a) Except as provided in ~~subsection~~ SUBSECTIONS (2)(b) AND (2)(D), a person who fails to pay a tax
 8 when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax.
 9 The penalty may not exceed 12% of the tax due.

10 (b) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (2)(D), a person who fails to pay a tax when due under Title 15,
 11 chapter 30, part 25, Title 15, chapter 53, Title 15, chapter 65, or Title 15, chapter 68, must be assessed a late
 12 payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of
 13 the tax due.

14 (c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original
 15 due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

16 (D) A PENALTY MAY NOT BE IMPOSED UNDER SUBSECTION (2)(A) OR (2)(B) ON THE AMOUNT OF UNPAID TAX IF
 17 THE TAXPAYER DEMONSTRATES THERE IS REASONABLE CAUSE FOR THE UNPAID AMOUNT AND THE TAXPAYER ACTED IN
 18 GOOD FAITH WITH RESPECT TO THE UNPAID AMOUNT.

19 ~~(d)~~ A (3) (A) SUBJECT TO SUBSECTION (3)(B), a person who makes a substantial understatement of tax
 20 imposed under Title 15 must be assessed a substantial understatement penalty in an amount equal to 20% of
 21 the understatement. As used in this subsection (2)(d) (3), "understatement" means the amount of the tax required
 22 to be shown on the return for the tax year minus the amount of tax imposed that is shown on the return. For
 23 purposes of this subsection (2)(d) (3):

24 (i) there is a substantial understatement of tax imposed under Title 15, chapter 30, if the understatement
 25 is the greater of 10% of the amount of tax required to be shown on the return or \$3,000; and

26 (ii) there is a substantial understatement of tax imposed for all other chapters under Title 15 if the
 27 understatement exceeds the lesser of:

28 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than
 29 \$10,000; or

30 (B) \$500,000.

1 (B) THE AMOUNT OF SUBSTANTIAL UNDERSTATEMENT MUST BE REDUCED BY THE AMOUNT OF THE
 2 UNDERSTATEMENT THAT IS ATTRIBUTABLE TO:

3 (I) THE TAX TREATMENT OF ANY ITEM BY THE TAXPAYER IF THERE IS OR WAS SUBSTANTIAL AUTHORITY FOR THE
 4 TREATMENT; OR

5 (II) ANY ITEM IF THE RELEVANT FACTS AFFECTING THE TAX TREATMENT OF THE ITEM ARE ADEQUATELY DISCLOSED
 6 IN THE RETURN OR IN A STATEMENT ATTACHED TO THE RETURN AND THERE IS A REASONABLE BASIS FOR THE TAX
 7 TREATMENT OF THE ITEM BY THE TAXPAYER.

8 ~~(3)(4) (a)~~ A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a
 9 return or report as required under Title 15 when due or fails to file a return or report within 60 days after receiving
 10 written notice from the department that a return must be filed is liable for an additional ~~late payment~~ penalty of
 11 ~~not less than \$1,000 or more than \$10,000~~ 15% a month, up to 75% of the tax due as determined by the
 12 department. The department may bring an action in the name of the state to recover the penalty and any
 13 delinquent taxes.

14 ~~(b)(4)(5)~~ A person who files a fraudulent return or report under Title 15 is liable for ~~a~~ AN ADDITIONAL
 15 penalty of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the
 16 return or report. The department may bring an action in the name of the state to recover the penalty, INTEREST,
 17 and any delinquent taxes.

18 ~~(c)(5)(6)~~ A person who files a frivolous return or report under Title 15 is liable, in addition to any other
 19 penalty imposed, for a penalty of \$2,500. A frivolous return or report is one THAT IS FILED BY A PERSON that omits
 20 information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based upon
 21 a frivolous position, or is based upon the taxpayer's action to impede collection of taxes. The department may
 22 bring an action in the name of the state to recover the penalty, INTEREST, and any delinquent taxes.

23 ~~(4)(6)(7)~~ (a) Interest on taxes not paid when due must be assessed by the department. The department
 24 shall determine the interest ~~rates~~ rate established under subsection ~~(4)(a)(i) (6)(A)(i) (7)(A)(i)~~ for each calendar
 25 year by rule subject to the conditions of this subsection ~~(4)(a) (6)(A) (7)(A)~~. Interest rates on taxes not paid when
 26 due for a calendar year are as follows:

27 (i) For individual income taxes not paid when due, including delinquent taxes and deficiency
 28 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the
 29 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code,
 30 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

1 (ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and
2 deficiency assessments, the interest rate is 12% a year.

3 (b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date
4 of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return
5 regardless of whether the taxpayer has received an extension of time for filing the return.

6 ~~(5)(7)(8)~~ (a) Except as provided in subsection ~~(5)(b)~~ ~~(7)(B)~~ ~~(8)(B)~~, this section applies to taxes, fees, and
7 other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

8 (b) This section does not apply to:

9 (i) property taxes; or

10 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,
11 chapter 70.

12 ~~(6)(8)(9)~~ Any changes to interest rates apply to any current outstanding tax balance, regardless of the
13 rate in effect at the time the tax accrued.

14 ~~(7)(9)(10)~~ Penalty and interest must be calculated and assessed commencing with the due date of the
15 return.

16 ~~(8)(10)(11)~~ Deficiency assessments are due and payable 30 days from the date of the deficiency
17 assessment.

18 ~~(9)(11)(12)~~ Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid
19 or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the
20 interest rate determined in subsection ~~(4)(a)(i)~~ ~~(6)(A)(i)~~ ~~(7)(A)(i)~~. (Bracketed language in subsection ~~(5)(a)~~ ~~(7)(A)~~
21 ~~(8)(A)~~ terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

22
23 COORDINATION SECTION. SECTION 3. COORDINATION INSTRUCTION. IF SENATE BILL NO. 199 IS NOT
24 PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

25
26 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

27
28 NEW SECTION. Section 5. Applicability. [This act] applies to tax periods beginning after December
29 31, 2011.

30 - END -